

**United States Department of Labor
Employees' Compensation Appeals Board**

D.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jamaica, NY, Employer**

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**Docket No. 17-1590
Issued: December 12, 2018**

Appearances:
*Stephen Larkin, for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 16, 2017 appellant, through his representative, filed a timely appeal from an April 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish right hip and left elbow conditions causally related to the accepted factors of his federal employment.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 25, 2012 appellant, a 50-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained right hip and left elbow conditions due to factors of his federal employment, including sitting, standing, walking, bending, lifting, loading vehicles, and climbing stairs.⁴ He noted that he first became aware of his claimed condition on August 12, 2011 and realized its relation to his federal employment on "November 24, 2010."⁵

By decision dated October 4, 2012, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted factors of his federal employment. Appellant subsequently requested reconsideration. By decision dated January 28, 2013, OWCP denied modification of its October 4, 2012 decision. On April 5, 2013 appellant appealed to the Board.

By decision dated August 26, 2013, the Board affirmed OWCP's January 28, 2013 decision, finding that appellant had not met his burden of proof to establish right hip and left elbow conditions causally related to factors of his federal employment.⁶

On August 18, 2014 appellant requested reconsideration. By decision dated November 26, 2014, OWCP denied modification. Appellant subsequently appealed to the Board. By decision dated August 18, 2015, the Board affirmed OWCP's November 26, 2014 decision, finding that appellant had not met his burden of proof to establish an injury causally related to factors of his federal employment.

On August 13, 2016 appellant's representative requested reconsideration and submitted additional medical evidence in support thereof.

In an August 8, 2016 report, Dr. Goldstein, noted that appellant worked as a letter carrier for the employing establishment from February 1985, and worked until June 16, 2012. He advised that he saw appellant on August 12, 2011.⁷ Dr. Goldstein noted that appellant's duties included

³ Docket No. 13-1114 (issued August 26, 2013); Docket No. 15-1083 (issued August 18, 2015).

⁴ The present claim was assigned OWCP File No. xxxxxx502. Appellant previously filed a traumatic injury claim (Form CA-1), assigned OWCP File No. xxxxxx444, wherein he alleged an injury to his right hip when he slipped and fell on leaves while descending stairs in the performance of duty on November 23, 2010. He further alleged that his condition worsened over time and he was unable to work. OWCP denied that claim by decision dated January 11, 2011, finding that the evidence of record was insufficient to establish that the November 23, 2010 incident occurred as alleged.

⁵ Although appellant indicated 2010, this appears to be a typographical error as he noted that he first became aware of his claimed condition in 2011.

⁶ Docket No. 13-1114, *supra* note 4.

⁷ Although Dr. Goldstein indicated 2012, this appears to be a typographical error as his earlier reports indicated August 12, 2011.

distributing letters, flats, and parcels. He noted that appellant also delivered parcels weighing approximately 35 pounds and that he engaged in these activities at work from 8 to 10 hours per day, five to six days per week. Dr. Goldstein reiterated that just as in his previous report dated June 18, 2012, appellant began complaining of stabbing-type pain in his right hip, which radiated down to his knee and foot, especially when walking, bending, performing side movements and when going up and down stairs. Appellant also developed left elbow pain, as well as some pain in his lower back. Dr. Goldstein also noted that appellant had a previous injury on November 23, 2010. He explained that appellant returned to regular-duty work a few days after this injury.

Dr. Goldstein explained that on his initial visit his examination revealed right greater trochanteric bursitis (aggravation) and left lateral epicondylitis. He opined that it was his “opinion at that time, with a reasonable degree of medical certainty, that the conditions as described were causally related to [appellant’s] duties as a letter carrier.” Dr. Goldstein explained that when appellant “fell on November 23, 2010, he landed on the right side of his hip, which would have caused the right greater trochanteric bursitis to occur.” He explained that trochanteric bursitis is an inflammation of the bursa (a fluid-filled sac near a joint) at the lateral (outside) point of the hip known as the greater trochanter. Dr. Goldstein advised that when the bursa becomes irritated or inflamed, it causes pain in the hip. He noted that the initial cause of trochanteric bursitis was an injury to the point of the hip, which can include falling onto the hip. Dr. Goldstein also advised that the condition was aggravated by repetitive walking and climbing of stairs, and as appellant did in his duties as a letter carrier. He opined that the diagnosed condition was an aggravation of right greater trochanteric bursitis.

Regarding the left lateral epicondylitis, Dr. Goldstein opined that it was the result of work performed by appellant as a letter carrier over a period of many years. He explained that an epicondyle was a projection of bone above a condyle, which is a rounded prominence at the end of a bone, usually where the bone connects to another bone, and where ligaments and tendons are attached. Furthermore, Dr. Goldstein explained that lateral epicondylitis is an overuse injury to the area of the lateral (outside) epicondyle of the elbow end of the humerus (upper arm bone). He noted that appellant’s duties as stated above, involved repetitive movement and lifting of heavy mail, including packages weighing 50 pounds or more, using his arms and elbows to distribute letter size flats and parcels as well as to deliver mail. In addition, appellant carried a heavy mail sack weighing approximately 35 pounds for delivery on his left shoulder over a period of more than 25 years. Dr. Goldstein explained that doing this work for 8 to 10 hours a day, five to six days per week over a period of 25 years would cause an overuse condition of the elbows, and would lead to the lateral epicondylitis found in his left elbow.

In a letter to OWCP dated February 23, 2017, appellant’s representative noted that OWCP’s procedures provide that reconsiderations must be completed within 90 days. He contended that more than six months had passed since he requested reconsideration and requested resolution of the matter.

By decision dated April 5, 2017, OWCP denied modification, finding that the medical evidence of record was insufficient to establish causal relationship between appellant’s diagnosed conditions and the accepted factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The evidence required to establish causal relationship is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS

The Board finds that the case is not in posture for decision.¹¹

In an August 8, 2016 report, Dr. Goldstein noted that appellant worked as a letter carrier for the employing establishment from February 1985 until June 16, 2012. He advised that he first saw appellant on August 12, 2011. Additionally, Dr. Goldstein described appellant's duties, which included distributing letters, flats, and parcels. Furthermore, he explained that appellant delivered parcels weighing approximately 35 pounds and noted that he engaged in these activities at work for 8 to 10 hours per day, five to six days a week. Dr. Goldstein also noted that appellant began complaining of stabbing-type pain in his right hip, which radiated down to his knee and

⁸ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *Id.*

¹¹ Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence that was previously considered in the August 22, 2013 and August 18, 2015 Board decisions. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA. *See B.R.*, Docket No. 17-0294 (issued May 11, 2018).

foot, especially when walking, bending, performing side movements, and when ascending and descending stairs. He also explained that appellant developed left elbow pain, as well as some pain in his lower back. While Dr. Goldstein noted that appellant had a previous injury on November 23, 2010, he also explained that appellant returned to regular-duty work just a few days after this injury. Dr. Goldstein provided examination findings, which revealed right greater trochanteric bursitis (an aggravation) and left lateral epicondylitis. He opined that it was his “opinion at that time, with a reasonable degree of medical certainty, that the conditions as described were causally related to [appellant’s] duties as a letter carrier.” Furthermore, Dr. Goldstein also explained that when appellant fell on November 23, 2010, he landed on the right side of his hip, which would have caused the right greater trochanteric bursitis to occur. He explained that trochanteric bursitis was an inflammation of the bursa at the lateral point of the hip known as the greater trochanter. Dr. Goldstein advised that when the bursa became irritated or inflamed, it caused pain in the hip. He noted that the initial cause of trochanteric bursitis was an injury to the point of the hip, which could include falling onto the hip. However, Dr. Goldstein also advised that the condition was aggravated by repetitive walking and climbing of stairs, which were part of appellant’s duties as a letter carrier. He opined that the diagnosed condition was an aggravation of right greater trochanteric bursitis.

Regarding the left lateral epicondylitis, Dr. Goldstein opined that it was the result of work performed by appellant as a letter carrier over a period of many years. He explained that an epicondyle was a projection of bone above a condyle, which was a rounded prominence at the end of a bone, usually where the bone connected to another bone, and where ligaments and tendons attached. Furthermore, Dr. Goldstein explained that lateral epicondylitis was an overuse injury to the area of the lateral (outside) epicondyle of the elbow end of the humerus (upper arm bone). He noted that appellant’s duties as stated above involved repetitive movement and lifting of heavy mail, including packages weighing 50 pounds or more, using his arms and elbows to distribute letter size flats and parcels as well as to deliver mail. In addition, appellant carried a heavy mail sack weighing approximately 35 pounds for delivery on his left shoulder over a period of more than 25 years. Dr. Goldstein explained that performing that work for 8 to 10 hours per day, five to six days per week over a period of 25 years would cause an overuse condition of the elbows, and would lead to the lateral epicondylitis found in his left elbow. Dr. Goldstein noted that appellant fully recovered from the November 23, 2010 event.

The Board finds that, while Dr. Goldstein’s August 8, 2016 report is not fully rationalized, he explained the processes by which appellant’s accepted factors of his federal employment caused his bursitis and epicondylitis. Although the medical report is insufficient to meet appellant’s burden of proof to establish his claim, it raises an uncontroverted inference between the diagnosed conditions and the accepted work factors, sufficient to require OWCP to further develop the claim.¹²

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant’s burden to proof to establish the claim, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹³ The Board will, therefore, remand the case to OWCP for further development. On remand, OWCP should prepare

¹² See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹³ *John W. Butler*, 39 ECAB 852, 859 (1988) (citing *Russell F. Polhemus*, 32 ECAB 1066 (1981)).

a statement of accepted facts and obtain a rationalized opinion from an appropriate Board-certified physician as to whether appellant's right hip and left elbow conditions are causally related to the accepted factors of his federal employment. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision of the Board.

Issued: December 12, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board